IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 230 OF 2002

Smt. Carmelina Luiza D'Mello,
aged 57 years, resident of Foro Wado,
St. Estevam, Tiswadi Taluka, Goa. ..... Appellant.

V/s.

1. Deputy Collector & SDO Ponda,
Sub-division Ponda, Goa.

2. Block Development Officer,
Ponda, Goa. ..... Respondents.

Mr. M.S. Joshi, Advocate for the appellant.

Mr. P.A. Kamat, Government Advocate for the respondents.

CORAM : B.H. MARLAPALLE &
N.A. BRITTO, JJ.

DATE : SEPTEMBER 08, 2004.

ORAL JUDGMENT : (Per MARLAPALLE, J.)

This appeal arises from the Award passed in Land Acquisition Case No.78/1997. The subject-land, admeasuring 12,627 sq. metres of Village Orgao, came to be acquired pursuant to the Notification under Section 4(1) of the Land Acquisition Act, 1894, published in the Official Gazette dated 22.3.1990 for the Village Panchayat of Tivrem -Orgao and, more particularly for construction of a playground complex. The Land

Acquisition Officer, by his Award dated 13.5.1993, had awarded a compensation at the rate of Rs.30/- per sq. metre for the acquired land and a further amount of Rs.10,965/- was awarded by him as a compensation for the trees existing in the acquired land. Not being satisfied with the rate awarded by the Land Acquisition Officer, the land owner moved an application under Section 18 of the Land Acquisition Act, which resulted in the said reference for enhancement. By the impugned Award dated 19.3.2002, the learned IInd Addl. District Judge, Panaji was pleased to enhance the market value of the acquired land to Rs.40/- per sq. metre as on 22.3.1990. At the same time, the reference Court accepted the market value of the said land at Rs.160/- per sq. metre, but subjected the said rate for deductions and that too at the rate of 75 %. The appellant/landowner is satisfied with the market value fixed at Rs.160/- per sq. metre, but she is aggrieved by the deductions at the rate of 75 % as considered by the reference Court and hence, this appeal only on that limited ground.

2. Misc. Civil Application No.644/2004, filed by the Village Panchayat of Tivrem-Orgao has been allowed by us for impleading it as a party respondent and once this application is allowed, the consequences would follow. Admittedly, the Land Acquisition Officer had not provided an opportunity of hearing to the applicant Village Panchayat and when it moved an application before the reference Court, it came to be dismissed. In the case of ***Abdul Rasak and ors. vs. Kerala Water Authority and***

ors, AIR 2002 SC 817, a similar issue came up for consideration, namely the consequences of the local authority for whom the land was acquired, not being impleaded as a party respondent, so as to afford it an opportunity of contesting the claim for fixation of compensation rate or its enhancement. The Apex Court referred to its earlier Constitution Bench Judgment in the case of ***U.P. Awas Evam Vikas Parishad v. Gyan Devi,*** AIR 1995 SC 726 and a subsequent decision in ***Agra Development Authority v. Special Land Acquisition Officer,*** AIR 2001 SC 992 and held that the award impugned was required to be set aside by remanding the reference to the Court below for fresh determination of the compensation rate, after hearing the body for whom the land was acquired. The decision rendered in the case of ***Abdul Rasak*** (supra) squarely applies to the case at hand and, therefore, we have no alternative but to allow this appeal, quash and set aside the award under challenge and remit the reference to the Court below for fresh determination. The applicant Village Panchayat would stand added as a party respondent before the reference Court and it will have also an opportunity of placing on record the evidence regarding the market value of the subject-land as on the day the Notification under Section 4 of the Land Acquisition Act was issued.

3. In the result, we allow this appeal partly and quash and set aside the impugned Award in Land Acquisition Case No.78/97 dated 19.3.2002. The applicant-Village Panchayat of Tivrem-Orgao shall be

deemed to have been brought on record in the reference case and the cause title of the reference case shall be amended accordingly. The Village Panchayat will file its written statement within a period of two weeks from today. The Court below shall expeditiously proceed to try the reference case and pass the award on its own merits, within a period of three months from the date of the written statement having been filed by the Village Panchayat. The statements of the witnesses already recorded on behalf of the claimant, need not be recorded afresh. The Village Panchayat shall be afforded an opportunity of cross examining the witnesses who have already been examined. However, such of the witnesses as are not available and, therefore, cannot be called before the Court, their statements shall not be excluded from consideration and shall be read in the evidence. The claimant may adduce such other evidence as she may propose to do and both, the State Government as well as the Village Panchayat, shall have the liberty of cross examining such witnesses who would be examined afresh by the claimant. Needless to mention, the Village Panchayat shall have liberty of having adduced such evidence as it may propose to do and shall not be entitled to a separate notice of the proceedings.

No costs.

B.H. MARLAPALLE, J.

N.A. BRITTO, J.

ssm.